



# **New Rules for Permitting Air Sources on Tribal Lands**

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# Outline of Presentation

- Key Dates
- How Tribes can get involved
- Timelines for various sources
- Attainment versus Nonattainment areas
- Specifics of the Minor Rule
- Specifics of the Major Rule
- Delegation and Public Participation

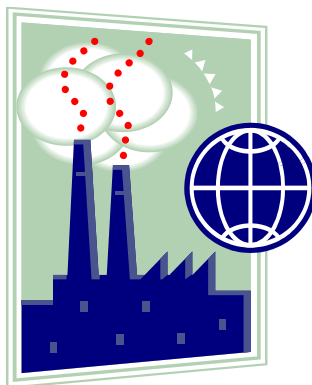
# Key Dates of the New Rule



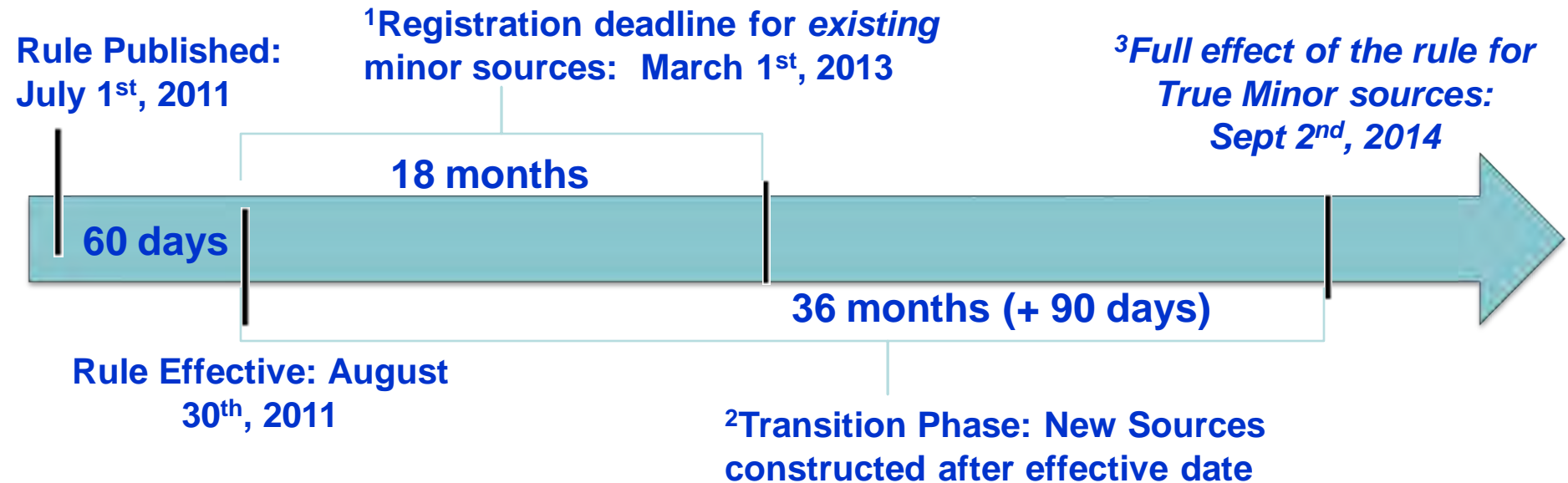
- July 1, 2011: Rule Published in Federal Register
- August 30, 2011: Rule Effective; New Major sources or modifications must submit a permit application and receive a permit from EPA prior to commencing construction. True Minor sources can begin registering with EPA. Major Sources who wish to establish Synthetic Minor Status can begin submitting permit applications to EPA.
- September 4, 2012: Final date by which existing Major sources who wish to avoid Title V must apply to EPA for a synthetic minor permit.
- March 1, 2013: Final date that Existing Minor sources must register with EPA.
- September 2, 2014: New or modified existing Minor sources must submit a permit application and receive a permit from EPA prior to commencing construction. (Except for General Permits – True Minor sources must submit permit applications no later than 6 months after the GP is published by EPA).

# How can Tribes Get Involved?

- Work with EPA to Identify and Register Facilities on Tribal land that are now subject to this new rule.
- Help conduct outreach to these facilities
  - Minor Sources must register with EPA
  - Major Sources must apply to EPA for permits prior to commencing construction or modifications
  - Synthetic Minor Sources must apply to EPA for permits to limit their emissions if they wish to avoid title V.



# True Minor Sources



1. *Existing* Minor sources have up to 18 months after the effective date to register.
2. Minor sources that begin construction after the effective date but before September 2<sup>nd</sup>, 2014 have 90 days to register after they begin operation. Sources that qualify for a General Permit have 6 months after a GP is published to apply for a permit.
3. New Minor sources built or modified after September 2<sup>nd</sup>, 2014 must obtain a site specific permit prior to commencing construction, which will also serve as their registration.

# Synthetic Minor Sources

**Rule Published:  
July 1<sup>st</sup>, 2011**

**<sup>3</sup>Existing Synthetic  
Minor sources deadline:  
Sept. 4<sup>th</sup>, 2012**

**60 Days**

**<sup>1</sup>Rule Effective:  
August 30<sup>th</sup>, 2011**

**<sup>2</sup>1 year Application  
Period**

1. *Existing Synthetic Minor* sources have up to 1 year to submit an application for a site-specific permit.
2. Beginning August 30<sup>th</sup>, 2011 *New or modified synthetic* sources must obtain a site-specific permit prior to commencing construction or modification.
3. *Existing Synthetic Minor* sources deadline to submit an application for a site-specific permit: Sept. 1<sup>st</sup>, 2012.

General Permits are NOT applicable to *Synthetic Minor* sources. *Synthetic Minor* sources MUST obtain a site-specific permit.

# Major Sources

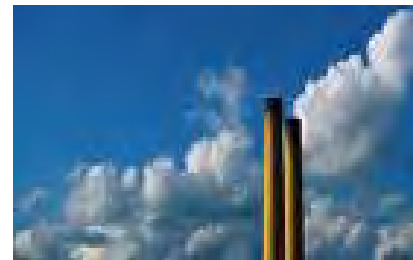
**Rule Published:  
July 1<sup>st</sup>, 2011**



1. Beginning August 30<sup>th</sup>, 2011, New or Major Modifications of Major Sources MUST obtain a site-specific permit prior to commencing construction or modification. Major Sources in Attainment Areas are already subject to Prevention of Significant Deterioration (PSD) permit requirements and MUST obtain a permit prior to commencing construction or modification.
2. *Existing Major Sources* have up to 1 year to submit an application for a site-specific permit, if they wish to become a synthetic minor source.

# What are Attainment and Nonattainment Areas?

- Based upon the concentrations of pollutants, the air quality of every area of the U.S. is classified as one of the following categories:
  - ✓ **Attainment/Unclassifiable** - concentration of pollutants are equal to or lower than the National Ambient Air Quality Standards (NAAQS) or there is not enough data on air quality to determine.
  - ✓ **Nonattainment** - concentrations of pollutants in air exceed NAAQS limits.



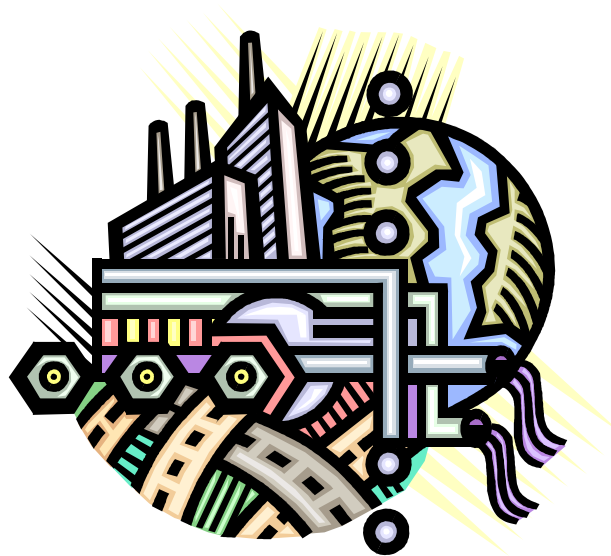


# Ozone Nonattainment Areas

PM<sub>2.5</sub>  
Nonattainment  
Areas

# What are the National Ambient Air Quality Standards?

- EPA sets NAAQS for:
  - ✓ *Ozone (smog)*
  - ✓ *Carbon Monoxide (CO)*
  - ✓ *Particulate Matter (dust/soot)*
  - ✓ *Nitrogen dioxide (NO<sub>2</sub>)*
  - ✓ *Sulfur dioxide (SO<sub>2</sub>)*
  - ✓ *Lead (Pb)*



# What does the new Tribal NSR Rule do?

- EPA already implements the Air Permitting Program in Indian country for Major Sources in Attainment Areas
- **This new Rule fills** the regulatory Air Program gap in Indian country and provides a permitting method for:
  - ✓ Minor Sources
  - ✓ Synthetic Minor Sources (e.g. sources that take voluntary limits to reduce emissions below the Major Source threshold to avoid the Title V program)
  - ✓ Major Sources in Nonattainment Areas



# What defines a *MAJOR* source?

- In attainment areas: A source with the potential to emit air pollutants, regulated under the Clean Air Act, greater than:
  - ✓ 100 tons per year (tpy), if specifically listed in the regulations or
  - ✓ 250 tpy, for all other sources
- In a nonattainment area: A source with a PTE air pollutants regulated under the Clean Air Act greater than:
  - ✓ 100 tpy or lower depending on the nonattainment classification severity regardless of source category

Examples of Major Sources: Power Plants, Cement Plants, Hotels/Casinos with large boilers or diesel engines, Landfills



# What defines a *Minor Source*?

- A source with the potential to emit (PTE) an air pollutant in amounts:
  - less than the major source thresholds,
  - but equal to or greater than the *minor thresholds*.
- Examples of Minor Sources: Gas Stations, Auto body Shops, Print Shops, Hospitals/Schools with small boilers or diesel engines, Hot Mix Asphalt Plants, Rock Crushing Operations, Oil and Gas Drilling Operations



# Specifics of the Tribal Minor NSR rule

# Minor NSR Thresholds for Attainment Areas

<b>Regulated NSR Pollutant</b>	<b>Tons per year</b>
Carbon monoxide (CO)	10
Oxides of nitrogen (NO <sub>x</sub> )	10
Sulfur dioxide (SO <sub>2</sub> )	10
Volatile organic compounds (VOC)	5
PM	10
PM-10	5
PM-2.5	3
Lead	0.1
Fluorides	1
Sulfuric acid mist	2
Hydrogen sulfide (H <sub>2</sub> S)	2
Total reduced sulfur (including H <sub>2</sub> S)	2
Reduced sulfur compounds (including H <sub>2</sub> S)	2
Municipal waste combustor emissions	2
Municipal solid waste landfills emissions	10



# Minor NSR Thresholds in Nonattainment Areas

<b>Regulated NSR Pollutant</b>	<b>Tons per year</b>
Carbon monoxide (CO)	5
Oxides of nitrogen (NO <sub>x</sub> )	5*
Sulfur dioxide (SO <sub>2</sub> )	5
Volatile organic compounds (VOC)	2*
PM	5
PM-10	1
PM-2.5	0.6
Lead	0.1
Fluorides	Doesn't Apply
Sulfuric acid mist	Doesn't Apply
Hydrogen sulfide (H <sub>2</sub> S)	Doesn't Apply
Total reduced sulfur (including H <sub>2</sub> S)	Doesn't Apply
Reduced sulfur compounds (including H <sub>2</sub> S)	Doesn't Apply
Municipal waste combustor emissions	Doesn't Apply
Municipal solid waste landfills emissions	Doesn't Apply

# Ozone Nonattainment Areas

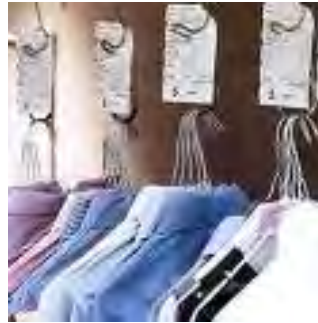
# Who does the minor NSR rule affect?

- **Existing minor/major sources that undergo a minor modification**
  - ✓ When there is a physical or operational change at an existing source that is **not** subject to major NSR
- **New minor sources**
  - ✓ Sources with the potential to emit equal to or above the minor NSR thresholds, but less than the corresponding major NSR threshold
- **Synthetic minor sources**
  - ✓ Major sources seeking to limit potential to emit below the major source threshold

***Proposed rule includes flowcharts to help!***

# Minor NSR permits

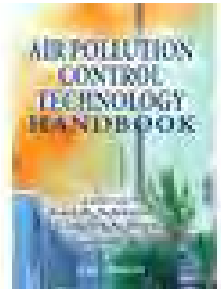
- **Site-specific facility wide permit** – a single permit covering all the operations at an individual facility
- **General permit** - a standardized permit for certain common source categories such as gas stations, dry cleaners, etc.



- **Synthetic minor source permits** – a single permit for an individual facility that sets operational controls to limit potential emissions in order to avoid being a major source subject to Title V

# What are the Minor NSR rule requirements?

- EPA's Review Criteria:
  - ✓ Case-by-case control technology review (except for General Permits which already include this review as part of the original development of the general permit)
  - ✓ Air Quality Impact Analysis (AQIA) (discretionary if EPA has reason to be concerned that source would cause or contribute to a NAAQS violation)
- Permit Requirements:
  - ✓ Monitoring, recordkeeping, and reporting conditions
  - ✓ Public participation, administrative and judicial review



# **Specifics of the Tribal Nonattainment Major NSR rule**

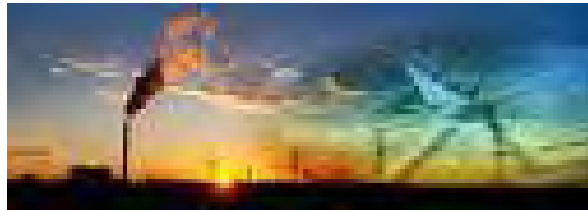
# Who does the nonattainment major NSR rule affect?

- **Existing Major sources that undergo major modifications**
  - ✓ any physical or operational change at a source that would result in a significant net emission increase of any regulated NSR pollutant
- **New major sources**
  - ✓ Sources with the potential to emit equal to or above the major NSR thresholds

***Proposed rule includes flowcharts to help!***

# What are the nonattainment major NSR rule requirements?

- EPA's review criteria:
  - ✓ LAER – the lowest achievable emission rate for any NSR pollutant
- Permit requirements:
  - ✓ Offsets at prescribed ratios – emissions increases are balanced by reductions from existing sources
  - ✓ Monitoring, recordkeeping, and reporting
  - ✓ Public participation, administrative and judicial review





## Economic Development Zone (EDZ)

Major stationary sources and major modifications subject to this program may be exempted from the offset requirement if they are located in a zone targeted for economic development by the EPA Administrator, in consultation with the Department of Housing and Urban Development (HUD).

- **Criteria for this waiver:**
  - ✓ Tribe demonstrates that the new permitted emissions will not interfere with attainment of the applicable NAAQS by the applicable attainment date.

Delegation,  
Public Participation, and  
Administrative and Judicial Review  
for **both rules**

# Delegation

- Tribes may seek mutually agreed upon delegation of authority to assist EPA with administration of both rules
- To apply for delegation, the tribe:
  - ✓ Must be recognized by the Secretary of Interior
  - ✓ Must have laws that provide adequate authority
  - ✓ Must demonstrate technical capacity and resources
- EPA retains enforcement authority for issued permits.
- Tribes may adopt and implement their own NSR permitting program through an EPA approved Tribal Implementation Plan (TIP). The Tribal NSR Rule may be used as a model

# Public participation

- Public notice with 30-day public comment period (except for General Permits)
- Draft permit, application, and justification for permit issuance/denial available for inspection at:
  - ✓ EPA Regional Office
  - ✓ At least one location in the area, for example at the Tribal environmental office



- Public notice to facility, Tribe, and interested parties. Notice may also be posted on EPA's web site, in local newspaper, and/or at locations such as trading posts, libraries, post offices, etc., as appropriate.
- Opportunity for a public hearing, if sufficient interest.

# Administrative and judicial review

- Any person may appeal a site-specific final permit if:
  - ✓ The person commented on the draft permit; or
  - ✓ The grounds for appeal occurred after the public comment period ended
- First, the person must appeal to EPA's Environmental Appeals Board (EAB)
- If denied by EAB, the person may appeal to Federal Court



## For further Information

- A copy of the Tribal NSR final rule and fact sheet can be found at: <http://www.epa.gov/NSR/actions.html#jun11>
- Information on EPA Region 9 Tribal Air Programs can be found at: <http://www.epa.gov/region9/air/tribal/index.html>
- Contacts:
  - Tribal NSR Rule or Permit questions: Cheryl Nelson; 415-972-3291 or [Nelson.Cheryl@epa.gov](mailto:Nelson.Cheryl@epa.gov)
  - Title V Operating Permit questions: Roger Kohn 415-972-3973 or [Kohn.Roger@epa.gov](mailto:Kohn.Roger@epa.gov)
  - [TribalAirPermits@epa.gov](mailto:TribalAirPermits@epa.gov)

# Thank You

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